APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the fourteenth day of June, one thousand nine hundred and sixty-eight. Present:

HON. J. JOSEPH SMITH,
HON. IRVING R. KAUFMAN,
HON. PAUL R. HAYS,
Circuit Judges

IVOR B. CLARK CO., INC., *Plaintiff-Appellee,*

v.

MORELAND H. HOGAN AND INTERNATIONAL PARK CORPORATION, *Defendants-Appellants,*

INTERNATIONAL OFFICE PARK, INC., *Defendant.*

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed, with costs to the appellee.

A. DANIEL FUSARO
Clerk

A true copy,

/s/ A. DANIEL FUSARO
Clerk

APPENDIX B

Rule 34. Discovery and Production of Documents and Things for Inspection, Copying, or Photographing.

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30 (b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26 (b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 26 (b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just. As amended Dec. 27, 1946, effective March 19, 1948.

APPENDIX C

Rule 37. Refusal to Make Discovery: Consequences.

(2) Other Consequences. If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical

or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following: . . .

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; . . .

APPENDIX D

Order, September 2, 1967

IVOR B. CLARK CO., INC. v. MORELAND H. HOGAN, ET AL.

66 Civ. 3003.

All three defendants have a common interest in opposing plaintiff's action. In my opinion, the conversation between defendant Hogan and his attorney, in the presence of attorneys for his codefendants, in preparation for his forthcoming examination by plaintiff, is privileged.

Cf. Continental Oil Company v. *United States,* 330 F. 2d 347 (9th Cir. 1964)

Plaintiff's motion for an order directing Hogan to answer questions as to this conversation is therefore denied.

Plaintiff also moves under Rule 34 for an order directing defendants Hogan and International Park Corporation to produce certain documents for plaintiff's inspection. Defendants consent to the production. Some of the documents are in New York. They shall be produced here.

As to the other documents, the only question is whether they shall be produced in Atlanta where defendants are situated and where the documents are located, or in New York. Plaintiff's attorney was in Atlanta taking other depositions in this case from August 14 to August 18, 1967. Defendants' attorney was there also, indeed plain-

tiff's attorney paid defendants' attorney's travel expenses and an attorney's fee for attendance. This motion had already been made and defendants' attorney knew of it. Apparently he made no offer to permit plaintiff's attorney to examine the documents while he was in Atlanta, as he could easily have done. Under these circumstances, to require plaintiff's attorney to go to Atlanta again at his own expense to examine these documents would be unfair. Accordingly, defendants shall either produce the documents in New York, or, if they elect for their own convenience to produce them in Atlanta, defendants Hogan and International Park Corporation shall pay to plaintiff the traveling expenses of one attorney for plaintiff from New York to Atlanta and return, plus an attorney's fee of $100 per day for each day or part thereof necessarily devoted to such inspection.

So ordered.

EDWARD C. McLEAN
U. S. D. J.

Dated: September 2, 1967

(Filed September 5, 1967)

APPENDIX E

Order, January 16, 1968

IVOR B. CLARK CO., INC. v. MORELAND H. HOGAN, ET AL.

Endorsement

66 Civ. 3003

Plaintiff moves to strike the answers of the defendants HOGAN and INTERNATIONAL PARK CORPORATION because of their failure to produce documents and records ordered to be produced by these defendants by order of Judge McLean entered on September 2, 1967. This order of

Judge McLean was entered without opposition of these defendants; from this fact, we infer that when the documents were directed to be produced, not only were they in existence but they were in the possession of or under the control of said defendants.

When this motion was heard by me on November 9, 1967, at argument I directed that the defendants submit an affidavit of HOGAN, explaining the non-compliance of the defendants. This has not been done and, save for a partial production of a small portion of the total documents covered by the order, there has been no compliance with the order. A totally insufficient, evasive and inadequate statement of HOGAN has since been filed, but it is palpably insufficient to justify defendants' apparent wilful disregard of Judge McLean's order.

Unless the documents called for are produced in this District on or before January 22, 1968, this motion will be granted and an order may in that event be submitted striking the answers of said defendants. So ordered.

/s/ SYLVESTER J. RYAN
U. S. D. J.

Dated: January 16, 1968.

U. S. DISTRICT COURT
FILED
JAN 16 1968
S.D. OF N.Y.

APPENDIX F

IVOR B. CLARK CO., INC., *Plaintiff*

v.

MORELAND H. HOGAN
INTERNATIONAL OFFICE PARK, INC. and
INTERNATIONAL PARK CORPORATION, *Defendants*

66 Civil 3003

Upon the annexed affidavit of Arthur S. Friedman, sworn to the 19th day of February, 1968, and due notice of the submission hereof, and of the aforesaid affidavit, having been given to the attorneys for the defendants, and upon the Order of this Court dated February 8th, 1968, entered as a Judgment by the Clerk on February 13th, 1968, and upon all of the prior pleadings and proceedings heretofore had herein, it is

ORDERED AND ADJUDGED, that plaintiff, Ivor B. Clark Co., Inc., of 666 Fifth Avenue, New York, N. Y., recover of defendants Moreland H. Hogan, of 877 Virginia Avenue, Hapeville, Georgia, and International Park Corporation, of 1001 Virginia Avenue, Hapeville, Georgia, the following:

(a) On the first claim of the complaint, against defendant, Moreland H. Hogan, the sum of $85,000.00, together with interest thereon from the 1st day of July, 1965, in the sum of $13,276.20, amounting together to the sum of $98,276.20, and

(b) On the second claim of the complaint against defendants Moreland H. Hogan and International Park Corporation, the sum of $[illegible],000.00, together with interest thereon from April 1, 1966, in the sum of $8,537.76, amounting together to the sum of $85,537.76,

aggregating as against defendant Moreland H. Hogan the sum of $183,813.96 and as against defendant Inter-

national Park Corporation, the sum of $85,537.76, all together with costs and disbursements to be taxed herein, and that plaintiff have execution therefor.

and it is further

ORDERED AND ADJUDGED, that this Amended Judgment is effective, *nunc pro tunc,* as at February 13, 1968.

SYLVESTER J. RYAN
U. S. D. J.

Dated: New York, N.Y.
February 21st, 1968

Judgment entered 2/21/68
JOHN J. OLEAR, JR.
Clerk

APPENDIX G

Affidavit of Moreland H. Hogan in Opposition to Motion To Strike

November 13, 1967

AFFIDAVIT OF MORELAND H. HOGAN
RE CLARK V. HOGAN, ET AL.

I have made a diligent search of the records of International Park Corporation and have forwarded those documents which pertain to the above-mentioned case to my attorney, Mr. John L. Hawkins of the firm of Boyden, Sarnoff, and Hawkins, 140 Broadway, New York, New York, 10005, on October 18, 1967. Contrary to the statement of attorneys for the Plaintiff that no sales closing information paper was included in my submission of documents, I point out that I did include a document entitled "Sales Closing Statement Between International Office Park, Inc., Seller, and International Park Corporation, Purchaser" dated December 2, 1965.

I contacted my Atlanta attorney, Mr. William G. Grant of the firm of Grant, Spears, and Duckworth, William Oliver Building, Atlanta, Georgia, concerning the documents pertaining to the suit of Surety Investment Company against International Office Park, Inc. and Moreland H. Hogan. Mr. Grant stated that he has now searched his files and is forwarding the related documents to Mr. Hawkins via air mail today (November 13, 1967). Grant further stated that he had not earlier forwarded these documents to me or International Park Corporation; therefore, I was not able to furnish these documents from my files.

I have not deliberately or otherwise withheld any documents pertaining to this case. The attorneys for the Plaintiff conducted a search in Atlanta and obtained a copy of the files of Barrett and Citizens and Southern National Bank and others. These copies were obtained prior to October 18, 1967, at which time I forwarded documents to Mr. John Hawkins. Mr. Hawkins, who was present during the Atlanta depositions, informed me that certain documents were produced from the files of the aforementioned groups; therefore, I did not attempt to obtain copies of these documents, which I did not have in my files, because of the information obtained by Mr. Hawkins. It is my belief that the Plaintiff has obtained a very complete record of the documents pertaining to this case.

It has been pointed out in several instances in the past that the attorneys for the Plaintiff have consistently harassed the undersigned and made many unfounded accusations against both the undersigned and his attorneys.

Due to the fact that I operate a one-man shop and to the fact that the demands made on my time have been tremendous and injurious to my business, in this case where the Plaintiff is already receiving monthly payments on a very large fee totaling $46,000, I respectfully request that these preliminaries be halted and that the case be tried in Court and at the convenience of the Court.